

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN PARKER, III,
Plaintiff,

v.

JEFF LYNCH, et al.,
Defendants.

No. 2:23-cv-0754 KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C § 1983. Pending before the court is plaintiff's motion for a court order directing New Folsom prison officials to turn over videotapes. (ECF No. 21.) For the reasons stated herein, plaintiff's motion is denied.

This action proceeds on plaintiff's claims alleging that on August 10, 2022, defendants Watts and Corture used excessive force against plaintiff and that defendant Lynch was aware of defendant Corture's propensity to use excessive force.

In the pending motion, plaintiff alleges that video footage of the February 10, 2022 incident exists. Plaintiff alleges that he requested video footage of the incident as evidence for his related disciplinary hearing. Plaintiff alleges that his request for the video footage was denied. Plaintiff alleges that he submitted an inmate request form to the ISU Coordinator requesting that the video footage be saved and/or stored. Plaintiff alleges that the ISU Coordinator did not

1 respond to this request.


2 In the pending motion, plaintiff requests that the court order New Folsom State Prison, the
3 ISU Coordinator or other prison officials to give plaintiff the video footage of the February 10,
4 2022 incident. Plaintiff would also like to know why he was denied access to the video footage.

5 Although plaintiff's pending motion refers to the date of the at-issue incident as February
6 10, 2022, the complaint alleges that the at-issue incident occurred on August 10, 2022.

7 Pursuant to Federal Rule of Civil Procedure 45(a)(2), plaintiff may request the video
8 footage from a non-party by way of a subpoena. However, plaintiff must demonstrate that the
9 video footage cannot be obtained through discovery propounded to defendants before the court
10 will consider a request for a subpoena duces tecum to non-parties for production of the video
11 footage. See Ackerson v. Elliott, 2022 WL 4484497 (E.D. Cal. Sept. 27, 2022). Accordingly,
12 plaintiff's motion for an order directing New Folsom prison officials to provide him with the
13 video footage is denied because plaintiff did not follow the proper procedures for obtaining this
14 evidence.

15 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for an order directing
16 New Folsom prison officials to provide plaintiff with video footage of the incident (ECF No. 21)
17 is denied.

18 Dated: November 30, 2023

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE
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